

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**AMERIPRISE FINANCIAL SERVICES, INC.**

**PLAINTIFF**

**VS.**

**CAUSE NO. 3:07CV404TSL-JCS**

**ALFRED D. ETHEREDGE**

**DEFENDANT**

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**DEFENDANT'S COMBINED RESPONSES TO MOTION TO COMPEL ARBITRATION  
AND MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS**

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COMES NOW the Defendant, Alfred D. Etheredge, by and through counsel, and files this his Combined Responses to Motion to Compel Arbitration and Memorandum in Opposition to Motion to Dismiss, and would show unto the Court the following:

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**Response to Plaintiff's Motion to Compel Arbitration**

1. All questions involving the validity of the arbitration clause in dispute are to be decided according to Mississippi law.

2. Mississippi law dictates that the subject arbitration clause is invalid and unenforceable due to fraud in the factum, fraud in the inducement, lack of mutuality, and unconscionability. In addition, the subject arbitration clause may not be enforced due to its ambiguous and illusory nature and inconspicuous placement.

3. In order to permit the Defendant the opportunity to obtain information in support of his claim that the subject arbitration clause is invalid, the Defendant requests that he be permitted to conduct discovery in this matter prior to any ruling on the Plaintiff's Motion to Compel Arbitration; such discovery period should permit the Plaintiff to conduct a handwriting and/or signature analysis, obtain information relating to the circumstances involved in the production of said arbitration clause, and ascertain other documentation and information relating to the arbitration clause in question. In addition, the Plaintiff request that he be permitted to file a supplemental response, and supporting memorandum of authorities, following the completion of the discovery process.

**Response to Plaintiff's Memorandum in Opposition to Motion to Dismiss**

\_\_\_\_ 4. The Defendant incorporates herein sections 1-3 above.

5. James McKennon, a Defendant in the Mississippi state court action, is a necessary and indispensable party to this action.

6. This Court lacks subject matter jurisdiction over this dispute.

7. The Defendant incorporates into this response his Memorandum of Authorities in Support of Response to Plaintiff's Memorandum in Opposition to Motion to Dismiss.

WHEREFORE, PREMISES CONSIDERED, the Defendant, Alfred Etheredge, requests that the Plaintiff's Motion to Compel Arbitration be denied, or that this Court

refrain from rendering a decision as to said Motion until such time as the Defendant has been permitted the opportunity to conduct discovery in this matter. In addition, the Defendant requests that his Motion to Dismiss be granted, with the Plaintiff to assume all costs and attorney's fees incurred by the Defendant in this dispute.

Respectfully submitted,

Alfred Etheredge

\s\ Eduardo A. Flechas  
EDUARDO A. FLECHAS

Eduardo A. Flechas, MSB #10669  
FLECHAS & ASSOCIATES, P.A.  
318 South State Street  
Jackson, Mississippi 39201  
Telephone: (601) 981-9221  
Facsimile: (601) 981-9958

CERTIFICATE OF SERVICE

I, Eduardo A. Flechas, do hereby certify that on the below date I electronically filed the foregoing instrument with the Clerk of the Court, via the ECF system, with notification being provided to the following by and through the ECF system:

Richard Montague, Esq.  
Well, Moore, Simmons & Hubbard  
4450 Old Canton Road, Suite 200  
Jackson, Mississippi 39211

Larry E. Mobley, Esq.  
Barrasso, Usdin, Kuperman, Freeman & Sarver  
909 Poydras Street, Suite 1800  
New Orleans, Louisiana 70112

SO CERTIFIED, this, the 20<sup>th</sup> day of August, 2007.

/s/ Eduardo A. Flechas  
EDUARDO A. FLECHAS